REMARKS

Claims 1-52, 55 and 58 are pending in the application. Claims 1, 19, 35, 40, 45, 47, 52, 55, and 58 are independent claims. Each of the independent claims is being amended. Claims 61-72 are being added. No new matter is being introduced by way of the amendments or new claims.

Claim 1 is being amended to recite, "a central server ... provides ... a candidate server list of at least two candidate servers to a network node adapted to interrogate individual servers represented in the candidate server list," where the underlined portion represents the claim amendments in the recitation. Support for the claim amendments can be found (i) in the drawings as originally filed at least in Fig. 1, step 2 at the central server 120a and client 140a and (ii) in the specification as originally filed (a) for a non-DNS embodiment at least at page 8, lines 9-11 and (b) for a DNS embodiment, page 3, lines 25-28 and Fig. 6, step 3, where "DNS" is an acronym for Domain Name Server.

Claims 1, 11-13, 16, 18, 19, 28-30, 33, 35, 38, 40, 43, 45, 47, 50, 52, 55, and 58 stand rejected under 35 U.S.C. 102 (e) as being anticipated by Primak et al. ("Primak") (Pub. No. 2001/0039585) (hereinafter "Primak").

With respect to Point (1) of the Office Action at hand on pages 9-10, Part 27, Applicant is amending claim 1 to replace "for responding to a client request" to -- to a network node adapted to interrogate individual servers represented in the candidate server list --. Support is found in the specification as mentioned above with respect to the amendments of claim 1. Support is also found for "a candidate server list of at least two candidate servers" in the specification as mentioned above with respect to the amendments of claim 1. Applicant believes the support addresses possible rejections under 35 U.S.C. 112, first paragraph as mentioned in the Office Action at hand in Part 27, last sentence.

In contrast, Primak discloses a client that only communicates with servers for connection request or substantive communications (e.g., Primak, page 2, paragraph [0024], last sentence). The Primak client(s) do not receive a candidate server list of at least two candidate servers and, therefore, do not know how to "interrogate," as recited as a limitation in now amended Claim 1. In other words, in the case of Primak, "communicates" means conducting substantive

communications (i.e., data transfer) rather than "interrogation" processes as described in Applicant's specification at least at page 8, lines 14-19. Applicant is not solely relying on a limitation that the client or other network node, such as a DNS server, is adapted to interrogate individual servers, but also that the "central server ... <u>provides a candidate server list of at least two candidate servers</u> to a network node adapted to interrogate individual servers represented in the candidate server list." In other words, Primak does not disclose providing a "candidate server list of at least two candidate servers" to a client or other network node, such as DNS server.

Moreover, based on Primak's disclosure, providing Primak's client with a list of at least two candidate servers would serve no purpose because the client only conducts substantive communications with servers and does not have an ability to "interrogate individual servers represented in the candidate server list," as recited in Applicant's now amended claim 1.

In response to Point (2) of the Office Action at hand on page 10, Part 28, Applicant's argument ("the higher the count, the more likely the server will be chosen") presented in the Reply filed December 16, 2004 was meant to highlight a distinction between "count" (e.g., increment, page 16, line 12 of the specification as originally filed) as recited in Applicant's claims 52, 55, and 58, as amended in that Reply, and "available capacity" (i.e., available service bandwidth) and "client connection quality" (e.g., round-trip time of "ping" and error rate value, Primak, page 3, paragraph [0028], last sentence). In other words, in the Reply filed December 16, 2004, Applicant referred to the specification to show by way of example that "count" is prima facie different from "available capacity" and "client connection quality."

Further, Applicant is amending claims 52, 55, and 58 in this Amendment to recite more clearly one aspect of the invention. Specifically, the recitation of "(ii) maintaining a count of the number of clients for which the server is providing service" is being replaced with -- (ii) maintaining a count representative of the number of times the server is selected to provide service --. Support can be found at least at page 9, lines 13-14 and page 16, lines 12-13 in the specification as originally filed. Applicant believes this Amendment further distinguishes the term "count" over Primak's "available capacity" and "client connection quality."

Based on the foregoing arguments Applicant respectfully submits that the rejection of now amended Claim 1 under 35 U.S.C. § 102(e) as being anticipated by Primak be withdrawn.

Because independent Claims 19, 35, 40, 45, and 47 are being amended in a similar manner, these claims should be allowed for similar reasons.

Because Claims 11-13, 16, 18, 19, 28-30, 33, 35, 38, 40, 43, 45, 47, and 50 depend from the now amended independent claims, these claims should be allowed for at least the same reasons.

Claims 17 and 34 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Primak in view of Meek et al. (USPN 6,539,426) (hereinafter Meek). Meek is being combined with Primak for purposes of load balancing. Because claims 17 and 34 depend from independent claims 1 and 19, respectively, the arguments above apply. Since Meek does not disclose the shortcomings of Primak with respect to the distinguishing limitations of amended claim 1 as described above in reference to the rejection under 35 U.S.C. § 102(e), Applicant respectfully submits that the rejections of claims 17 and 34 under 35 U.S.C. § 103(a) as being unpatentable over Primak in view of Meek should be withdrawn.

Claims 8-10, 25-27, 37, 42, and 49 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Primak in view of Guenthner et al (USPN 6,134,588) hereafter (Guenthner). Because claims 8-10 depend from claim 1, claims 25-27 depend from claim 19, Claim 37 depends from claim 35, claim 42 depends from claim 40, and claim 49 depends from claim 47, which are being amended to include similar limitations as described above in reference to claim 1, the arguments above apply. More particularly, as stated in Part 21 of the Office Action at hand, Guenthner is being applied for its disclosing another server load balancing method where the candidate server list includes extra, randomly selected, candidate servers (e.g., abstract; Figure 8; col. 8, lines 25-50).

However, because Guenthner does not disclose the shortcomings of Primak with respect to the limitations of the Applicant's amended independent claims as described above in reference to the rejections under 35 U.S.C. §102(e), Applicant respectfully submits that the rejection of the dependent claims 8-10, 25-27, 37, 42, and 49 under 35 U.S.C. § 103(a) as being unpatentable over Primak in view of Guenthner should be withdrawn.

New dependent claims 61-72 further limit, in reference to the independent claims from which they respectively depend, a limitation directed to the network node adapted to interrogate individual servers as a client or DNS server. Support can be respectively found for the client

embodiment in the specification as originally filed (i) in Fig. 1, ref. no. 140 and steps 2-6 and described at least at page 8, lines 14-16 and (ii) in Fig. 6, ref. no. 605 and steps 3-6 and described at least at page 18, line 10.

CONCLUSION

In view of the above amendments and remarks, it is believed that all now pending claims (claims 1-52, 55, 58, and 61-72) are in condition for allowance, and it is respectfully requested that the application be passed to issue. If the Examiner feels that a telephone conference would expedite prosecution of this case, the Examiner is invited to call the undersigned.

Respectfully submitted,

HAMILTON, BROOK, SMITH & REYNOLDS, P.C.

By _____
Mark B. Solomon
Registration No. 44,348

Telephone: (978) 341-0036
Facsimile: (978) 341-0136

Concord, MA 01742-9133
Dated: 4/29/05